

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK AARON HESS, by and through :
his parent and natural guardian, :
MARK HESS :
: CIVIL ACTION
5. :
: NO. 08-0229
A.I. DUPONT HOSPITAL FOR :
CHILDREN, et al. :

ORDER

AND NOW, this 28th day of August, 2009, upon consideration of Defendants' Uncontested Petition for Certification of Immediate Appeal from the Court's March 5, 2009 Order (Doc. No. 46), and all papers submitted in support thereof, it is ORDERED as follows:

1. This Court's Memorandum and Order of March 5, 2009 (Doc. No. 43) is CERTIFIED for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The March 5, 2009 Order involves controlling questions of law over which there are substantial grounds for difference of opinion. Immediate appeal has the potential to materially advance the ultimate termination of the litigation. The following controlling questions of law are hereby CERTIFIED to the United States Court of Appeals for the Third Circuit: (1) Would the Delaware Supreme Court recognize a medical monitoring cause of action if presented with the record in this case? (2) Would Plaintiff be able to state a claim for medical monitoring in Delaware? (3) Has Plaintiff met his summary judgment burden of establishing a genuine issue of material fact for trial regarding his medical monitoring claim?
2. There having been a final determination on the merits as to Count I, Count II,

Count III, Count IV, and Count V, and there being no just reason for delay, the Clerk is directed to enter final judgment rendered on those claims pursuant to Federal Rule of Civil Procedure 54(b).

IT IS SO ORDERED.

BY THE COURT:



R. Barclay Surrick, J.